BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DONALD G. CARLSON Claimant	)	
VS.	)	
HUTCHINSON CORRECTIONAL FACILITY Respondent	)	Docket No. 1,012,165
AND	)	
STATE SELF-INSURANCE FUND Insurance Carrier	)	

ORDER

Claimant requested review of the June 20, 2005, Award by Administrative Law Judge (ALJ) Bruce E. Moore. The Board heard oral argument on November 8, 2005.

APPEARANCES

Mitch Rice, of Hutchinson, Kansas, appeared for the claimant. E. L. Lee Kinch, of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument, both parties stipulated to the 61 percent wage loss found by the ALJ assuming the Board concludes claimant is entitled to permanent partial general (work) disability under K.S.A. 44-510e(a).

ISSUES

The ALJ concluded claimant developed problems in his left shoulder as a direct and natural result of his compensable right shoulder injury that occurred on October 30, 2002.

Following his interpretation of the *Pruter*[1] rationale, the ALJ determined claimant sustained two separate successive injuries rather than one simultaneous injury to both shoulders. Accordingly, he held that claimant is entitled to compensation based upon two scheduled injuries rather than to the body as a whole.

Claimant contends the ALJ's decision limiting the award to two functional scheduled impairments rather than a work disability was not supported by the evidence. Rather, claimant argues that his left shoulder injury is the natural and probable result of his right shoulder injury, an injury which respondent does not dispute. Claimant asserts his bilateral shoulder injury ultimately led to his termination from employment because of his inability to perform his job within his restrictions. Therefore, claimant asserts he is entitled to a work disability of 50.5 percent based upon a 40 percent task loss and an 61 percent wage loss.

Respondent submits that the more persuasive evidence is that claimant did not sustain an injury to his left shoulder as a direct and natural consequence of his right shoulder injury. Rather, claimant's left shoulder complaints are nothing more than the remnants of claimant's 1991 non-work related injury and surgery. Respondent requests that the ALJ's award be modified to find permanent partial disability to claimant's right shoulder only. In the alternative, respondent asserts the ALJ's finding that claimant suffered two separate scheduled injuries and subsequent denial of work disability benefits should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant was employed at Hutchinson Correctional Facility for approximately 20 years and at the time of the accident was a master sergeant in charge of monitoring inmates and running a cell house and dormitories.

Claimant testified that in April 2001, his left shoulder went out and Dr. Jonathan Loewen performed surgery to repair his labral cuff followed by physical therapy. Thereafter, in January 2002 claimant had a second surgery to repair the rotator cuff in that same shoulder. He returned to work in June 2002 after being fully released. Claimant was given no physical restrictions or limitations in regard to his left shoulder and returned to his

[1] *Pruter v. Larned State Hospital*, 271 Kan. 865, 26 P.3d 666 (2001).

regular job as a master sergeant.[2] Since that release and up to the time of his subsequent injury, claimant had no further problems with his left shoulder.

Claimant testified he injured his right shoulder while working on October 30, 2002. This injury occurred as he was opening the door to a storage room. He turned the handle but found it was frozen. As the door latch was sprung, his hand slipped off the handle and he immediately noticed pain in his right shoulder. The compensability of this injury is not in dispute.

After reporting his injury, claimant was referred to Dr. Loewen, the physician who had treated him for his left shoulder injury. Dr. Loewen ordered an MRI, which was done on November 14, 2002. The radiologist indicated the film showed a hypertrophic acromioclavicular joint causing impingement and a possible small tear in the supraspinatus tendon. Dr. Loewen decided to take claimant off work and treat the injury conservatively.

When claimant's symptoms did not improve, Dr. Loewen decided that surgery was necessary. On January 30, 2002, claimant underwent surgery on his right shoulder, after which he was required to wear a sling to keep his arm immobilized. Following surgery claimant wore the sling for approximately four to six weeks. It is undisputed that claimant would have been able to do little with his right arm while wearing the sling.

A second surgery was performed on claimant in October 2003 for the purpose of removing scar tissue which was inhibiting claimant's range of motion. Claimant was required to wear a sling after that surgery, but only for comfort. After removal of the sling, claimant was in physical therapy for six months. During this time, claimant testified he used his left arm to do all of his activities of daily living.

The first mention in Dr. Loewen's records of claimant's left shoulder complaints are noted in his February 2, 2002, note, just as he was preparing to release claimant from care. However, claimant testified that he complained about his left shoulder to both his physical therapist and Dr. Loewen before that date. In fact, claimant testified he complained of left shoulder pain to Dr. Loewen virtually every time he saw him after the surgery on his right shoulder on January 30, 2002. Claimant testified Dr. Loewen told him that the pain was caused by overuse and increased the therapy so that his therapist would work on his left shoulder as well as his right. The physical therapy notes from claimant's treatment of August 18, 2003, and September 23, 2003, state under "diagnosis": "L shld overuse syndrome p/o R shld stiffness."[3] Claimant testified that he had physical therapy on both his shoulders for about seven months.

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[2] Claimant is not presently claiming the April 2001 injury was work-related although at the time, he believed it was.

[3] Loewen Depo., Ex. 3 at 69-70.

Dr. Loewen testified that although his office notes indicate that the first time claimant complained of significant left shoulder pain was in February 2004, it was "very possible"[4] that claimant had complained of pain earlier. In fact, he testified such complaints are not unusual. He usually presumes that pain in an opposing shoulder would be tendonitis or overuse and as the operative shoulder gets better, the complaints of pain in the opposite shoulder subside.

Dr. Loewen released claimant to return to work on February 2, 2004. At that time, he felt that claimant's right shoulder had reached maximum medical improvement. Dr. Loewen diagnosed claimant's left shoulder as irritation of the left AC joint, likely overuse related, secondary to increased activity with the left shoulder because of the right shoulder injury. Dr. Loewen accepted as his own the restrictions set out in the Functional Capacities Evaluation (FCE) and recommended they become claimant's permanent work restrictions.

Claimant attempted returned to work after his release, but was told not to report for work. Claimant was terminated as of March 17, 2004 as respondent was unable to accommodate Dr. Loewen's permanent restrictions. Claimant testified that during the period he was off work for his work-related injury, he did not engage in any type of work activities that involved the repetitive use of his left arm. He merely used his left arm in his daily activities.

Dr. Loewen saw claimant on June 11, 2004, at the request of claimant's attorney, concerning claimant's left shoulder complaints. Dr. Loewen's assessment at that time was left shoulder impingement syndrome with weakness of his supraspinatus. Dr. Loewen testified that it was his opinion that claimant's left shoulder problems were secondary to his overuse caused by lack of ability to use the right shoulder the way he normally would.

Using the AMA *Guides*,[5] Dr. Loewen gave claimant a 14 percent impairment rating to his right shoulder and a 7 percent impairment rating to his left shoulder, which converts to a 12 percent whole person impairment rating. Dr. Loewen also reviewed claimant's job history information and opined that claimant suffered a 40 percent task loss.

Dr. Loewen was asked about his treatment of claimant's injury of April 2001 and testified he had surgically repaired claimant's labral and debrided a partial rotator cuff tear. Claimant initially did well, but then claimant's rotator cuff tear worsened. Dr. Loewen took him back to surgery and repaired claimant's rotator cuff tear. Dr. Loewen testified that claimant made a full recovery from his April 2001 injury and that if he had given claimant

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[4] *Id.* at 12-13.

[5] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

a disability rating under the *Guides* from the April 2001 injury, it would have been 0 percent.

Claimant was examined by Dr. Philip Mills on August 11, 2004, at the request of his attorney. Dr. Mills diagnosed a right shoulder labral tear, possible rotator cuff tear of the supraspinatus insertion and impingement syndrome, left shoulder interarticular scarring with posterior capsular tightness, partial rotator cuff tear and impingement syndrome status post arthroscopic debridement and repair. After reviewing Dr. Loewen's records on claimant and examining the claimant, Dr. Mills opined that both the right and left shoulder problems were directly and causally related to the October 30, 2002, injury. Dr. Mills testified that claimant's prior left shoulder injury would make him more susceptible to a problem with that shoulder. Dr. Mills stated that after claimant's surgeries on his right shoulder, claimant was in a sling and was forced to use his left, nondominant arm, and the left shoulder "just could not take it."[6] Dr. Mills noted that in the physical therapy notes of December 12, 2002, claimant reported to the physical therapist a tingling in the left upper trapezius.

Dr. Mills testified that, using the AMA *Guides*, claimant had a 10 percent permanent partial impairment to each upper extremity for loss of range of motion. In addition, claimant had a 10 percent permanent partial impairment to the right shoulder for the decompressive arthroplasty. Using the Combined Values Chart, he opined that claimant had a 19 percent permanent partial disability to the right upper extremity and a 10 percent permanent partial impairment to the left upper extremity, irrespective of any preexisting problems on the left. Converting these impairments to the body as a whole, claimant would have a 6 percent permanent partial impairment for the left and a 12 percent permanent partial impairment for the right, which combined for a 17 permanent partial impairment to the whole body.

After reviewing claimant's job history information and comparing it with the FCE, Dr. Mills testified that claimant had a 40 percent task loss as a result of his work-related injury based upon the task loss analysis offered at the Regular Hearing. Like Dr. Loewen, Dr. Mills testified that he would have rated claimant's disability at 0 percent impairment to the left shoulder in June 2002, before his October 2002 injury.

Dr. Robert Rawcliffe, Jr., a board certified orthopedic surgeon, examined claimant on August 10, 2004, at the request of respondent. After reviewing the medical records and examining claimant, Dr. Rawcliffe made a diagnosis of rotator cuff tear in both shoulders, the left shoulder in 2001 and the right shoulder in 2002. Dr. Rawcliffe testified that the injury to the left shoulder was not related to claimant's work-related accident. Dr. Rawcliffe stated that if claimant used his left arm more than usual just in the course of normal everyday activities, it could cause him some symptoms but would not cause any additional permanent impairment.

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[6] Mills Depo. at 20.

Dr. Rawcliffe opined that based on the *Guides,* claimant had a 13 percent impairment to the right shoulder which could be converted to an 8 percent impairment to the whole body. He recommended that claimant lift occasionally up to 20 pounds with either hand and more frequently up to 10 pounds, but should avoid activities that involve repetitive or constant use of the arms and shoulders. In reviewing a task list prepared by Karen Terrill, Dr. Rawcliffe opined that claimant would be unable to perform 4 of the 12 tasks, which is a 33 percent task loss.

Dr. Rawcliffe testified he could not rate the claimant's preexisting impairment in his left shoulder because Dr. Loewen's records did not mention abduction, which is, in his view, one of the most important ranges of motion. Dr. Rawcliffe noted that when he examined claimant in August 2004 there was a loss of flexion, loss of abduction, loss of internal and external rotation and loss of extension, all of which could be rated under the *Guides*. And Dr. Rawcliffe agreed that something happened to claimant's left shoulder from June 2002 until August 10, 2004, to make it worse. Finally, Dr. Rawcliffe opined that claimant had a 13 percent functional impairment to his left upper extremity. He just was not able to determine when claimant sustained the 13 percent impairment.

Karen Terrill is a rehabilitation consultant who saw claimant at the request of respondent on September 23, 2004. Ms. Terrill analyzed the types of positions that might be available to claimant given his background in supervisory positions and concluded that those positions typically paid $8 to $10 per hour or $320 to $400 per week.

Currently, claimant asserts that his left upper extremity no longer has the strength it had before his October 30, 2002, injury to his right shoulder. And he also no longer has the same range of motion he had before the October 30, 2002 injury. Claimant complains he has a constant ache in both his right and left shoulders, and the shoulders have a tendency to go to sleep, leaving his fingers numb.

The ALJ considered the evidence relating to claimant's functional impairment and concluded "claimant has suffered bilateral shoulder impairment" and that claimant established a "causal relationship between the bilateral shoulder impairment and [c]laimant's work duties."[7] The Board agrees with the ALJ's conclusions. All three of the testifying physicians have opined that claimant presently has impairment in both shoulders, with the right worse than the left. Two of those physicians attribute claimant's present left shoulder impairment to "overuse" and claimant's efforts to protect his injured right shoulder following his injury and subsequent surgeries. As noted by the ALJ, even Dr. Rawcliffe acknowledges claimant's present left upper extremity impairment, but he does not relate the two impairments to each other.

[7] ALJ Award (Jun. 20, 2005) at 7.

It is a well accepted principle within this area of the law that "[w]hen a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of the employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury."[8] In this instance, the Board, like the ALJ, finds claimant sustained a bilateral shoulder injury which has left him with a permanent impairment to both the left and right shoulders. The Board likewise affirms the ALJ's functional impairment findings of 14 percent to the right shoulder and 7 percent to the left shoulder based upon the opinions of the treating physician, Dr. Loewen. When combined, these ratings result in a 12 percent body as a whole functional impairment rating.

The more difficult aspect of this claim stems from the issue of whether to compensate claimant for two scheduled injuries under K.S.A. 44-510d, or as a permanent partial general body (work) disability under K.S.A. 44-510e(a). Claimant asserts he is entitled to a work disability based upon his bilateral shoulder impairment, couching his resulting disability as one to the whole body, thus exempt from the limits established by the schedule in K.S.A. 44-510d and entitled to a work disability under K.S.A. 44-510e(a). Respondent, on the other hand, initially seemed to concede that claimant is entitled to a work disability award under K.S.A. 44-510e(a), assuming the left shoulder is found to be a consequence of the right shoulder injury, at least until the ALJ issued his Award and referencing *Pruter* and K.S.A. 44-510c(a)(2). Now respondent maintains claimant's resulting impairment is limited to the right shoulder only and even if both shoulders are found compensable, they are to be compensated as two separate scheduled injuries as found by the ALJ.

In order to understand the ALJ's Award, a review of *Pruter* is necessary. In *Pruter*,[9] the Kansas Supreme Court attempted to clarify existing law concerning injuries that result to more than one body member. The Court of Appeals has said that -

> In *Pruter*, the Supreme Court clarified existing law concerning whether injuries to more than one body member should be treated as two separate scheduled injuries or as a single whole body disability. 271 Kan. at 872. The *Pruter* court held that when simultaneous injuries cause substantial impairment to parallel limbs then disability should be calculated based on a whole body injury; however, if all these criteria are not met, then the disability should be calculated as two separate scheduled injuries. 271 Kan. at 872.[10]

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[8] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

[9] *Pruter v. Larned State Hospital*, 271 Kan. 865, 26 P.3d 666 (2001).

[10] *Markovich v. Orion Fittings*, No. 91,248, 2004 WL 2282116, 98 P.3d 672 (2004).

But this statement is not entirely accurate. The focus in *Pruter* was not solely on whether that injured employee sustained a "substantial" impairment. Rather, the question was whether, based upon her simultaneous, separate non-parallel injuries, she was qualified for the presumptive permanent total status under K.S.A. 44-510c(a)(2).

Pruter involved a claimant who simultaneously injured her right wrist and right leg. Although both the wrist and leg represent body members that are listed in the schedule set forth at K.S.A. 44-510d and recovery is generally limited to the compensation set forth in the schedule, Pruter argued that her simultaneous injuries to her arm and leg should be compensated as a whole body disability rather than two separate scheduled injuries.

The *Pruter* Court reviewed the case law and determined that the scheduled injury statute, K.S.A. 44-510d, states the general rule for injuries to scheduled members.[11] And the rule in *Honn*,[12] that the combined loss of certain body members in pairs shall, in the absence of proof to the contrary, constitute a permanent total disability is the exception to that rule.[13] The *Pruter* Court noted K.S.A. 44-510c(a)(2) creates a rebuttable presumption that the loss of parallel members results in a permanent total disability. This presumption can be rebutted by evidence that the injury does not meet the definition of permanent total disability.[14] In the case of *Pruter*, that claimant had returned to work earning the same wages as she had before the injury. And the *Pruter* Court seemed to focus on the relatively low number assigned to her functional impairment. It is this aspect of the opinion that apparently led the *Markovich* Court to suggest that only "substantial" impairments qualify for presumptive permanent total status.

When simultaneous injuries to a combination of body members listed in K.S.A. 44-510c(a)(2) occur, the claimant is presumed to be permanently and totally disabled. There is nothing within the statute that suggests that the "loss" must be significant or of a certain level. However, the finding of permanently and totally disabled can be rebutted by

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[11] See *Pruter*, supra.

[12] *Honn v. Elliott*, 132 Kan. 454, 295 Pac. 719 (1931).

[13] *Id.* 132 Kan. at 458. *Honn* dealt with R.S. Supp. 1930, 44-510(3)(a) provided that "Loss of both eyes, both hands, both arms, both feet or both legs, shall, in the absence of proof to the contrary, constitute a total permanent disability." This statute was amended in 1959 to provide as follows: "Loss of both eyes, both hands, both arms, both feet, or both legs, *or any combination thereof*, in the absence of proof to the contrary, shall constitute permanent total disability." K.S.A. 44-510c(a)(2).

[14] *Pruter*, 271 Kan. at 875, 26 P.2d 666; see also *Markovich v. Orion Fittings*, No. 91,248, 2004 WL 2282116, 98 P.3d 672 (2004).

evidence, including the fact that the claimant has returned to work at a comparable wage.[15] *Pruter* does not speak to those injuries that occur at separate times or at different times, only to simultaneous injuries to multiple body members.

Based upon *Pruter*, the ALJ reasoned that "[c]laimant suffered relatively slight functional impairment to both shoulders, in separate incidents and as a result of different causes, months apart. Vocational testimony establishes that [c]laimant retains the ability to earn significant wages, and is thus not permanently and totally disabled."[16] Accordingly, the ALJ found that claimant suffered two separate scheduled injuries rather than a whole body disability.

The Board has considered the ALJ's conclusion on this aspect of the Award and holds the ALJ erred in applying the *Pruter* principles and finding claimant sustained two separate scheduled injuries. The Board disagrees with the ALJ's findings for the reason that the Board finds that *Pruter* does not have application to this case. Claimant did not sustain simultaneous shoulder injuries. Rather, he sustained a parallel, bilateral shoulder injury, first in the right shoulder and then in the left by virtue of his overuse. The Board finds that in a case such as this, where there is a distinct injury to one body member followed by a second injury which is the natural and probable result of the first, the *Pruter* principles do not apply. To hold otherwise would invalidate a well established line of precedent.

It has long been held that every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*[17], the Court held:

> When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from

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[15] *Pruter* does not make clear whether the consideration of the severity of the impairment involves only the functional impairment number or the work disability number, which is often times far greater than the percentage of functional impairment depending on the facts. This case illustrates that scenario. While claimant's functional impairment numbers are relatively low, the impact to this claimant's livelihood has been significant. He can no longer do the only job he has done for the past 20 years and his prospects for employment involve jobs that pay much less.. This case demonstrates the flaw in the *Pruter* analysis. *Pruter* seems to ignore the principles involved in K.S.A. 44-510e (work disability for those people who have sustained a whole body injury and are unable to earn a comparable wage) for simultaneous parallel injuries. It would appear from *Pruter* that an employee who sustains a simultaneous parallel injury to two or more body members listed in K.S.A. 44-510c(a)(2), that employee qualifies for either 2 scheduled injuries or permanent total disability benefits, not work disability under K.S.A. 44-510e. Before *Pruter*, such injuries were treated as general body disabilities and were not precluded from a work disability award under the appropriate circumstances.

[16] ALJ Award (Jun. 20, 2005) at 9.

[17] *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

> the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

Here, the Board finds (as did the ALJ) that claimant's left shoulder injury is a natural consequence of the right shoulder injury. While the ALJ expressed some reservations, the Board is not so inclined. All of the physicians testified that claimant has a permanent impairment to his left shoulder. Only Dr. Rawcliff is unable to attribute the permanency to claimant's aggravation of his shoulder condition while using his left arm exclusively following shoulder surgery to his right. Dr. Loewen's delayed acknowledgment of claimant's left shoulder complaints is understandable. He believed the complaints would subside once the right shoulder recovered. When they did not, he noted them and ultimately provided a rating. Finally, the ALJ was troubled by the fact that claimant could have two surgeries to his left shoulder and not suffer any "overuse" to his right in 2001, only to have his left shoulder symptoms flare up while relying on that extremity following right shoulder. But the Board is not as troubled. When claimant had his surgery in 2001, he relied on his dominant right shoulder. But when he had surgery on the right, he was relying on a post-surgeried left, non-dominant shoulder. It is understandable that his results would be less than optimum and that his left shoulder would become problematic.

Claimant sustained impairment to both his shoulders and this combination of impairment is not covered by the schedule set forth in K.S.A. 44-510d. Thus, his impairment is to be addressed by K.S.A. 44-510e as a permanent partial general disability.

Permanent partial general disability is determined by the formula set forth in K.S.A. 44-510e(a), which provides, in part:

> . . . The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment.. . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

This statute must be read in light of *Foulk* and *Copeland*.[18] In *Foulk,* the Kansas Court of Appeals held that a worker could not avoid the presumption against work disability

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[18] *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995); *Copeland v. Johnson Group, Inc.,* 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

as contained in K.S.A. 1988 Supp. 44-510e (the predecessor to the above-quoted statute) by refusing to attempt to perform an accommodated job, which the employer had offered and which paid a comparable wage. In *Copeland*, the Kansas Court of Appeals held, for purposes of the wage loss prong of K.S.A. 44-510e, that a worker's post-injury wages should be based upon the ability to earn wages rather than actual wages being received when the worker fails to make a good faith effort to find appropriate employment after recovering from his or her injury. If a finding is made that a claimant has not made a good faith effort to find post-injury employment, then the factfinder must determine an appropriate post-injury wage based on all the evidence before it.

In this instance, the parties did not take issue with the ALJ's factual findings with respect to a wage loss of 61 percent. They did, however, dispute the 33.3 task loss finding. The ALJ adopted Dr. Rawcliff's opinion as to task loss based upon a task analysis performed by Karen Terrill. It is unclear why the ALJ adopted this opinion over the opinions of Drs. Loewen and Mills, both of whom opined claimant had sustained a 40 percent task loss. The Board has considered this issue and finds that it is persuaded by Dr. Loewen's task loss opinion as he was the treating physician and in the best position to evaluate claimant's capabilities. Thus, the ALJ's finding of task loss is modified to 40 percent.

When the 40 percent task loss is averaged with the 61 percent task loss, the result is a 50.5 percent work disability. The Award is hereby modified to reflect a 50.5 percent work disability, over and above claimant's 12 percent functional impairment.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated June 20, 2005, is modified as follows:

The claimant is entitled to 61.86 weeks of temporary total disability compensation at the rate of $432 per week or $26,723.52 followed by 44.18 weeks of permanent partial disability compensation at the rate of $432 per week or $19,085.76 for a 12 percent functional disability followed by permanent partial disability compensation at the rate of $432 per week not to exceed $100,000 for a 50.5 percent work disability.

As of November 30, 2005 there would be due and owing to the claimant 61.86 weeks of temporary total disability compensation at the rate of $432 per week in the sum of $26,723.52 plus 99.14 weeks of permanent partial disability compensation at the rate of $432 per week in the sum of $42,828.48 for a total due and owing of $69,552, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of $30,448 shall be paid at the rate of $432 per week until fully paid or until further order from the Director.

All other findings and conclusions are adopted to the extent they are not modified

herein.

IT IS SO ORDERED.

Dated this _____ day of November, 2005.

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BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

c: Mitch Rice, Attorney for Claimant
E. L. Lee Kinch, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director